

THE HONORABLE MARY JO HESTON
CHAPTER 13
HEARING DATE: November 7, 2019
HEARING TIME: 1:00 P.M.
LOCATION: Tacoma, Washington
RESPONSE DATE: October 31, 2019

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF WASHINGTON AT TACOMA**

In re: BRIAN DOUGLAS DESKINS and CHERYL ANN DESKINS, Debtors.	Case No.: 18-42845-MJH TRUSTEE'S RESPONSE TO DEBTORS' MOTION TO MODIFY AMENDED CHAPTER 13 PLAN
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COMES NOW, Michael G. Malaier, Chapter 13 Standing Trustee, and responds to
Debtors' Motion to Modify Amended Chapter 13 Plan ("Motion") (ECF No. 50), as follows:

BACKGROUND

Debtors filed this Chapter 13 case on August 21, 2018. The applicable commitment period is sixty months. The case is currently in the fifteenth month. The bar date for filing non-governmental claims was October 30, 2018. Filed unsecured claims total \$112,730.07, and filed priority claims total \$33,844.99. Debtors propose to pay at least \$101,342.77 to allowed nonpriority unsecured claims.

TRUSTEE'S RESPONSE - 1

Michael G. Malaier
Chapter 13 Standing Trustee
2122 Commerce Street
Tacoma, WA 98402
(253) 572-6600

RESPONSE

Debtors' seek to modify their plan to reduce their plan payment from \$2,527.00 per month to \$276.92 per week (\$1,199.98 per month) due to Mrs. Deskins' decreased business income; however, Debtors' monthly gross income appears to have increased and the only significant changes to Debtors' budget are increased expenses of \$1,368.69, for which the Motion provides no explanation.

Debtors are above-median and sought *Lanning* relief at confirmation. Their projected disposable income per the means test was \$175,954.80; however, their confirmed plan provided for payment to non-priority unsecured creditors in the amount of \$101,342.77. ECF No. 32 at 3. Debtors' proposed modified plan proposes to pay non-priority unsecured creditors \$0.00. ECF No. 49 at 3.

Debtors' prior budget listed Mrs. Deskins' monthly net business income at \$2,908.53 per month. ECF No. 31 at 2. Debtors' current budget lists Mrs. Deskins' monthly net business income at \$2,504.53. ECF No. 48 at 2. While the stated amount monthly business income has decreased by \$404.00 per month, Trustee would like to verify Mrs. Deskins' self-prepared profit and loss statement by reviewing Debtors' bank statements and evidence claimed business expenses.

Debtors' monthly gross income has actually increased from \$7,104.73 to \$7,791.18 due to Mr. Deskins' monthly gross income increasing from \$6,555.28 (ECF No. 31 at 1) to \$7,696.92 (ECF No. 48 at 1). The increase reflected in the budget may also be more than his actual increase as Debtors based his income on a nine month average, while the paystubs provided only show year to date income for eight and a half months. Once corrected, Mr.

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1 Deskins' average monthly net income through September 14, 2019 should be \$8,053.82
2 (\$68,457.45 ÷ 8.5 = \$8,053.82), not \$7,696.92.
3

4 Debtors' expenses have increased in almost every category without explanation or
5 evidence. Debtors' claimed transportation expense has doubled from \$400.00 to \$800.00.
6 Home maintenance has also doubled. Utility expenses have increased from \$225.00 per month
7 to just under \$1,000.00 per month. Food has increased by \$250.00 per month. Clothing has
8 increased by \$250.00 per month. Debtors' household size has not changed. No change in
9 circumstances or evidence regarding expenses was referenced in Debtors' Motion or declaration
10 in support thereof. Debtors are above median and are not permitted to simply absorb all of their
increased income into their budget to the detriment of their creditors.
11

12 Debtors have not experienced the change in circumstances they claimed in their Motion,
therefore, there is no basis to modify their current plan.
13

14 **WHEREFORE**, Trustee requests that the Motion be denied.
15

16 **DATED** this 30th day of October, 2019.
17

18 /s/ Mathew S. LaCroix
19 Mathew S. LaCroix, WSBA# 41847 for
Michael G. Malaier, Chapter 13 Trustee
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CERTIFICATE OF MAILING

2 I certify under penalty of perjury under the laws of the United States I caused to be
3 mailed via first class mail a true and correct copy of Trustee's Response to the following:

4 Bank of America, N.A.
5 P.O. Box 31785
6 Tampa, FL 33631

7 Citibank, N.A.
8 701 East 60th Street North
9 Sioux Falls, SD 57117

10 Specialized Loan Servicing
11 8742 Lucent Blvd., Suite 300
12 Highlands Ranch, CO 80129

13 Brian Douglas Deskins
14 Cheryl Ann Deskins
15 5016 – 64th Ave. W.
16 University Place, WA 98467

17 The following parties received notice via ECF:

18 Ellen Ann Brown
19 Lance E. Olsen
20 Michael S. Scott
21 U.S. Trustee

22 Executed at Tacoma, Washington this 30th day of October, 2019.

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15 /s/ Tracy Maher
16 Tracy Maher
17 Motion Coordinator for
18 Chapter 13 Trustee